



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 218
[2011 Senate Bill 92]

**Health Care Exchange Insurance
Coverage of Abortions**

Background

Under current Wisconsin law, no funds of the state, local government, or long-term care district and no federal funds passing through the state treasury may be paid to a physician or medical facility for the performance of an abortion, except in the following cases:

- The abortion is directly and medically necessary to save the life of the woman and a physician so certifies.
- The abortion is performed in the case of sexual assault or incest, a physician so certifies, and the sexual assault or incest is reported to law enforcement.
- Due to a medical condition existing prior to the abortion, a physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman and a physician so certifies. [s. 20.927, Stats.]

The federal Patient Protection and Affordable Care Act (PPACA) requires the establishment of health insurance exchanges in order to expand access to health insurance. PPACA provides each state the opportunity to establish an exchange. The Secretary of the federal Department of Health and Human Services (DHHS) is responsible for establishing and operating an exchange in any state that chooses not to establish an exchange and in any state that the Secretary determines will not have an exchange operable by January 1, 2014.

Exchanges are required to make qualified health plans offered by private insurers available to eligible individuals and employers. Qualified health plans must meet certain federal requirements, including offering the essential health benefits package that is established by DHHS. Premium tax credits and cost-sharing subsidies will be available to individuals and families with incomes between

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

133-400% of the federal poverty level. For coverage purchased through exchanges by persons whose incomes are above these limits, no subsidies or tax credits will be provided.

PPACA specifies that a qualified health plan is not required to provide coverage of *any* abortion services as part of its essential health benefits package. [42 USC 18023 (b) (1) (A) (i).] In addition, states are authorized to prohibit abortion coverage in qualified health plans offered through an exchange in the state by enactment of a law establishing the prohibition. [42 USC 18023 (a) (1).]

If a qualified health plan does provide coverage of any type of abortion for which federal funding is prohibited by the Hyde Amendment,* the issuer of the plan may not use any amount attributable to any federal cost-sharing subsidy or premium tax credit for purposes of paying for those abortions. [42 USC 18023 (b) (2) (A).] In addition, the issuer must collect two separate payments from each plan enrollee: (a) the portion of the premium equal to the actuarial value of the coverage of those abortion services; and (b) the amount to be paid directly by the enrollee for coverage under the plan for services other than those abortion services. The issuer must deposit these payments into separate accounts, and the costs of any of those abortion services may be paid only from the account into which payments for abortion coverage are deposited. [42 USC s. 18023 (b) (2) (B) and (C).]

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Act 218 prohibits any qualified health plan that is offered through any health insurance exchange established in Wisconsin under PPACA from covering any abortion that is ineligible for funding under current Wisconsin law governing public funding for abortions, described above. Thus, under the Act a health plan offered through an exchange established in Wisconsin may provide coverage for only the following types of abortions:

- An abortion that is directly and medically necessary to save the life of the woman, if a physician so certifies.
- An abortion performed in the case of sexual assault or incest, if a physician so certifies, and the sexual assault or incest is reported to law enforcement.
- An abortion that a physician determines is directly and medically necessary to prevent grave, long-lasting physical health damage to the woman due to a medical condition existing prior to the abortion, if a physician so certifies.

Effective date: Act 218 takes effect on April 20, 2012.

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* Since 1976, a prohibition on the use of federal funds for abortions has routinely been included in the annual appropriations bill funding the federal DHHS. The exact wording of the prohibition, generally referred to as the Hyde Amendment, has been modified over the years, and currently provides that funding may not be used for any abortion other than one in which the pregnancy is the result of an act of rape or incest, or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. [P.L.111-8.]